

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

WILLIE SMITH,

Plaintiff,

v.

HOMES, et. al.,

Defendants.

3:13-cv-00202-MMD-WGC

ORDER

Re: ECF No. 94

Before the court is Defendants' Motion to Strike Plaintiff's Opposition Motion to Defendants' Reply. (ECF No. 94.)¹ Plaintiff filed a response (ECF No. 95) and Defendants filed a reply (ECF No. 96). Plaintiff then filed an opposition to Defendant's reply brief. (ECF No. 97.)

Defendants seek to strike a sur-reply (ECF No. 93) filed by Plaintiff in response to Defendants' reply brief in support of their motion for summary judgment.

Plaintiff argues that because Defendants asserted in their motion that the failure to give Plaintiff all pages of his case notes printout was a clerical error, he was entitled to respond. (ECF No. 95 at 2.)

In his opposition to Defendants' reply brief (ECF No. 97), he includes a belated request for leave to file his sur-reply (ECF No. 93)

Local Rule 7-2 contemplates the filing of a motion, response and reply. No provision exists for filing a sur-reply; therefore, a party must obtain leave of court do so. "A sur-reply may only be filed by leave of court, *and only to address new matters raised in a reply to which a party would otherwise be unable to respond.*" *Enriquez v. Red Rock Financial Services, LLC*, 2015 WL 1186570 (D. Nev. Mar. 16, 2015) (quoting *Kanvick v. City of Reno*, No. 3:06-cv-00058, 2008 WL 873085, at * 1, n. 1 (D. Nev. Mar. 27, 2008)). Further, sur-replies "are highly

¹ Refers to court's electronic case filing (ECF) number.

1 disfavored, as they usually are a strategic effort by the nonmovant to have the last word on a
2 matter.” *Id.* (citation and quotation marks omitted).

3 Here, Plaintiff did not timely request leave of court to file a sur-reply. Even if Plaintiff
4 had sought leave of court, the court would not have permitted the filing of the sur-reply. While
5 Defendants’ reply brief did address Plaintiff’s argument for sanctions and the exclusion of an
6 exhibit filed in support of Defendants’ motion, Plaintiff’s sur-reply did not substantively respond
7 to that argument. It repeated the arguments he made on this topic in his opposition brief. In
8 addition, it repeated arguments concerning Plaintiff’s claims that were asserted in Plaintiff’s
9 opposition brief.

10 For these reasons, the court finds good cause to strike the sur-reply from the record.
11 Defendants’ motion to strike (ECF No. 94) is **GRANTED**, Plaintiff’s sur-reply (ECF No. 93)
12 shall be **STRICKEN** from the record.

13 **IT IS SO ORDERED.**

14 DATED: December 11, 2015.

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16 WILLIAM G. COBB
17 UNITED STATES MAGISTRATE JUDGE
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